Filing Receipt

Received - 2021-11-10 01:13:22 PM
Control Number - 51415
ItemNumber - 696

PUC DOCKET NO. 51415
SOAH DOCKET NO. 473-21-0538

APPLICATION OF SOUTHWESTERN	**§**	**BEFORE THE**
ELECTRIC POWER COMPANY FOR	**§**	**PUBLIC UTILITY COMMISSION**
AUTHORITY TO CHANGE RATES	**§**	**OF TEXAS**

SWEPCO'S REPLY TO STAFF'S SUPPLEMENTAL RESPONSE REGARDING NORMALIZATION VIOLATION RELATED TO NOLC ADFIT TREATMENT

As stated fully in its Exceptions to the Proposal for Decision (PFD), Southwestern Electric Power Company (SWEPCO) believes Staff's position concerning the proper ratemaking treatment for SWEPCO's stand-alone $455,122,490 net operating loss carryforward (NOLC) accumulated deferred federal income tax (ADFIT) asset is inconsistent with state law and constitutes a violation of the normalization rules of the Internal Revenue Service (IRS). However, realizing that the Commission may adopt Staff's position, as recommended in the PFD, SWEPCO offered in its Exceptions to the PFD two alternative ordering paragraphs designed to avoid an unintended normalization violation if the IRS does rule that implementation of Staff's recommendation constitutes a normalization violation. In its Supplemental Response filed on November 3, 2021, Staff requests that the Commission adopt SWEPCO's second proposed ordering paragraph that will allow SWEPCO to establish a regulatory asset for the revenue requirement associated with SWEPCO's proposed ratemaking treatment for SWEPCO's stand-alone NOLC ADFIT asset "pending a resolution with the IRS regarding potential normalization violations."[1] In their November 9, 2021 letter addressing Exceptions to the PFD, the Administrative Law Judges have also supported Commission adoption of that ordering paragraph. SWEPCO appreciates Staff's and the ALJs' support in avoiding an unintended normalization violation that would be harmful to SWEPCO and its customers pending resolution of the matter by the IRS.

In both the beginning and closing of its Supplemental Response, Staff expresses its support for SWEPCO's recommended regulatory asset ordering paragraph. However, in between those two expressions of support, Staff takes the opportunity to reiterate and expand on its disagreement with SWEPCO regarding the underlying issue. Expanding upon its arguments presented in its Reply to Exceptions, Staff now posits the payments SWEPCO received under its consolidated tax

[1] Staff's Supplemental Response at 4 (Nov. 3, 2021).

sharing agreement with SWEPCO's parent company, American Electric Power Company (AEP), constitute "zero-cost" capital and the change in SWEPCO's revenue requirement associated with including SWEPCO's stand-alone NOLC ADFIT asset in rate base would be a mere $457,228. However, whether Staff characterizes its ratemaking proposal as (1) the exclusion of the NOLC ADFIT asset from rate base, (2) inclusion of the NOLC ADFIT asset in rate base but exclusion of a corresponding $455 million of other rate base, or (3) the designation of $455 million in capital as "zero-cost," the result is the same – a violation of the IRS normalization rules. The question is one that must be answered by the IRS.

SWEPCO's calculation of the revenue requirement impact of inclusion of the NOLC ADFIT asset in rate base is $16,264,046 on a Texas jurisdictional basis. SWEPCO arrived at this amount by calculating the authorized return recommended by the PFD on the $455,122,490 NOLC ADFIT asset.[2] It is SWEPCO's belief that adoption of a lesser impact calculated by Staff under any of its three theories would constitute a normalization violation. However, that is a determination to be made by the IRS. In the meantime, adoption of SWEPCO's recommended regulatory asset, as proposed by SWEPCO and recommended by the ALJs' November 9, 2021 letter,[3] will allow SWEPCO to preserve its compliance with IRS normalization rules pending resolution at the IRS without impacting the rates being paid by customers until determination of the issue by the IRS. As observed by Staff in its Supplemental Response, this regulatory asset "would be written off if the IRS determines there would be no normalization violation."[4]

CONCLUSION

As explained in its Exceptions to the PFD, SWEPCO respectfully requests that the Commission reject the PFD and find that inclusion of SWEPCO's stand-alone NOLC ADFIT asset in rate base, as proposed by SWEPCO, is both consistent with state law requiring taxes to be calculated on a stand-alone basis and consistent with the IRS normalization rules. However, if the Commission were to disagree, SWEPCO requests that the Commission adopt SWEPCO's proposal to create a regulatory asset sufficient to ensure compliance with normalization requirements regarding its NOLC ADFIT asset pending an IRS determination on the normalization issue by

---

[2] SWEPCO's calculation also includes an adjustment to the excess ADFIT amortization relating to the NOLC ADFIT.

[3] With an effective date equal to that of the rates being implemented in this proceeding.

[4] Staff's Supplemental Response at 1-2.

including the ordering paragraph recommended in the ALJ's November 9, 2021 letter. SWEPCO appreciates Staff's and the ALJs' support in this latter effort to avoid an unintended normalization violation that would be harmful to SWEPCO and its customers.

Respectfully submitted,

Melissa Gage
State Bar No. 24063949
Email: **magage@aep.com**
aepaustintx@aep.com (Service)
Leila Melhem
State Bar No. 24083492
Email: **lmmelhem@aep.com**
aepaustintx@aep.com (Service)
400 West 15th Street, Suite 1520
Austin, Texas 78701
Telephone: (512) 481-3320
Facsimile: (512) 481-4591
AMERICAN ELECTRIC POWER SERVICE CORPORATION

William Coe
State Bar No. 00790477
Email: **wcoe@dwmrlaw.com**
Kerry McGrath
State Bar No. 13652200
Email: **kmcgrath@dwmrlaw.com**
Kevin Oldham
State Bar No. 24037208
Email: **koldham@dwmrlaw.com**
P.O. Box 1149
Austin, Texas 78767
Telephone: (512) 744-9300
Facsimile: (512) 744-9399
DUGGINS WREN MANN & ROMERO, LLP

By: ________________________
William Coe

ATTORNEYS FOR SOUTHWESTERN ELECTRIC POWER COMPANY

CERTIFICATE OF SERVICE

I certify that, unless otherwise ordered by the presiding officer, notice of the filing of this document was provided to all parties of record via electronic mail on November 10, 2021, in accordance with the Second Order Suspending Rules issued in Project No. 50664 and Order No. 1 in this matter.

William Coe